

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.04 CV 10746 JLT

IVAN SANTIAGO,
Plaintiff

v.

MARCUS EDDINGS,
Defendant

**DEFENDANT MARCUS EDDINGS'S MOTION *IN LIMINE* TO PRECLUDE
ROLANDO LUGO FROM TESTIFYING AT TRIAL UNDER LOCAL RULE 43.1(B).**

At the end of today, Monday, November 06, 2006, Plaintiff indicated to the Court and to the Defendant that he intended to call Rolando Lugo as a witness at trial tomorrow, Tuesday, November 7, 2006. However, Rolando Lugo is not on the parties' Joint Witness List and the Plaintiff failed to disclose Mr. Lugo pursuant to all three parts of Local Rule 43.1(B). Accordingly, Rolando Lugo should be precluded from testifying at trial. As further support for this motion:

1. Plaintiff did not include Rolando Lugo on the Joint Witness List, filed by the parties on November 3, 2006. Document 63.
2. Not until just prior to the Court recessing today, Monday, November 06, 2006, did the Plaintiff notify the Court and the Defendant that he intends to call Rolando Lugo as a witness at trial.

Plaintiff failed to comply with Local Rule 43.1(B)

3. Accordingly, Plaintiff did not comply with Local Rule 43.1 (B)(1), which demands that "Each party shall give advance notice to the judicial officer and the other parties, before jury selection, of the identity of all witnesses whose testimony it may offer during trial..." Local Rule 43.1 (B)(1).
4. The plaintiff also failed to comply with Local Rule 43.1 (B)(2), which demands that not later than two (2) days before it seeks to use the testimony of any witness ... a party shall advise the judicial officer and all other parties of its intent to use the testimony of the witness on a specified day. Local Rule 43.1 (B)(2).
5. Further, no party shall be allowed to use the testimony of a witness other than the witness already listed on the filing with the court before trial commences. See Local Rule 43.1 (B)(3)(A). Plaintiff has also failed to comply with this rule.

Any testimony by Mr. Lugo would be impermissibly cumulative and in violation of this Court's order precluding "irrelevant and unnecessary plaintiff witnesses"

6. It is undisputed that Rolando Lugo was not in the bathroom with Sergeant Eddings and Plaintiff during the strip search. Thus, his testimony will only be cumulative of what Plaintiff has already presented to this Court. See Fed.R.Evid. 403.
7. This Court allowed the Defendant's motion in limine regarding Plaintiff calling unnecessary and irrelevant witnesses. See Order, Document 57, para. 3; Defendant's motion in limine, Document 49.
8. Moreover, Mr. Lugo's testimony is only another way for the Plaintiff to re-litigate the strip search issue, which this Court has made abundantly clear is impermissible.

Lugo cannot testify to damages of Plaintiff

9. Finally, Rolando Lugo cannot be called to testify as a "damages" witness. The Plaintiff did not see or speak to Mr. Lugo from the time of the incident, March 20, 2003, through the time of his deposition, January 18, 2005, a period of nearly 22 months. See Exhibit A, attached hereto, portion of Plaintiff's deposition transcript.

The Jury was not notified that Rolando Lugo might testify at trial

10. Mr. Lugo is not on the witness list. Accordingly, the Jury was not read his name as a potential witness that might testify at trial. Thus, there is a risk a juror might be acquainted with Mr. Lugo.

For the reasons stated above, Defendant Marcus Eddings's motion *in limine* should be granted and Plaintiff should be precluded from calling Rolando Lugo as a witness at trial.

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Respectfully submitted,

DEFENDANT MARCUS EDDINGS
William F. Sinnott
Corporation Counsel

By his attorneys:

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Dated: November 6, 2006

CERTIFICATE OF SERVICE

I hereby certify that this document was filed through the ECF system and will therefore be sent electronically to the registered participants as identified on the Notice of Electric Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on November 6, 2006.

/s/ Thomas Donohue
Thomas Donohue

Exhibit A